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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/820,870

04/09/2004

Jacques Habatjou

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9281

22850

7590

06/23/2006

OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C.  
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ALEXANDRIA, VA 22314

EXAMINER

LE, HUYEN D

ART UNIT

PAPER NUMBER

3751

DATE MAILED: 06/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/820,870		HABATJOU, JACQUES	
	<b>Examiner</b>		<b>Art Unit</b>	
	Huyen Le		3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 April 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-58 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15, 20-36, 38, 39, 46-54 and 56-58 is/are rejected.
- 7) ☒ Claim(s) 16-19, 37, 40-45 and 55 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>04/09/2004</u> .  | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to under 37 CFR 1.83(a) because they fail to accurately show length 14 of the stem is substantially equal to a height 21 of the sleeve as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d).
2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "bottom cap" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Objections***

3. Claim 24 objected to because of the following informalities: line 2, "said cap" should be --said cup--. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 7, 8, 11, 56 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. Regarding claims 7, 8 and 11, the phrase "substantially equal" renders the claim indefinite because it is unclear what the deviation of the length of the stem and the height of the sleeve is considered to be "substantially equal".

7. Regarding claim 56, it is unclear to the examiner as to what the applicant means by "at least one lug is disengaged from the said helical groove when said cup is in the said uppermost position" while the lug does not pass through the aperture to thereby prevent the cup from moving beyond the upper most position as recited in claim 1.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1-11, 15, 20, 22-25, 48, 49, 52, 53, 57 and 58 are rejected under 35 U.S.C. 102(b) as being anticipated by Wang (5,813,421).

The Wang reference discloses a dispensing device (Figs. 1 and 2A-2D) including: a hollow base 15 having a cylindrical inner wall, a cup 12a which accommodates the product, a sleeve 13 which is positioned at least partially above the base 15, wherein the sleeve 13 is rotatable relative to the base 15, wherein the cup 12a moves axially inside the sleeve 13 in response to rotation of the sleeve 13 relative to the base 15, and further wherein the cup 12a is rotatably coupled to the sleeve 15, such that the cup 12a rotates when the sleeve 15 rotates, wherein the cup 12a is formed at the end of a stem 12b (or 16), and wherein the stem 12b has at least one lug 12c in proximity to a free end of the stem 12b, and wherein the lug 12c engages with a helical groove 15a in the cylindrical inner wall of the base 15, and further wherein the lug 12c is resiliently supported by the stem 12b so as to be capable of disengaging from the groove 15a at least at one end of the groove 15a, and wherein the sleeve 13 comprises means (the middle section of sleeve 13 shown in cross hatching in Fig. 1) to limit the travel of the cup 12a.

Regarding claim 2, the stem 12b is oriented perpendicularly to a bottom of a well formed by the cup 12a, and the stem 12b is positioned at a center of the bottom.

Regarding claim 3, the means to limit the travel of the cup (the middle section of sleeve 13 shown as cross-section hatching in Fig. 1) closes off the sleeve transversely while leaving sufficient space for an aperture, and wherein the stem 3 slides through the aperture.

Regarding claim 4, the stem 12b comprises a transverse cross-section complementary with an inner periphery of the aperture such that the stem 12b is integral in rotation with the sleeve 13.

Regarding claims 5 and 6, a transverse cross-section at a level of the lug is larger than the inner periphery of the aperture (see Fig. 1).

Regarding claim 7 (as illustrated in Fig. 1a that length 15 and height 21 are substantially equal", Wang shows that a length of the stem 12b defined between the lug 12b and the bottom of the cup is "substantially equal" to a height of the sleeve, on the axis of the helical groove, between the means to limit travel and a dispensing aperture (at the highest edge) in the sleeve 13.

Regarding claims 8 and 10, the means to limit travel bears on an edge surface of the base delineating an access to the cylindrical inner wall.

Regarding claims 9 and 11 (as illustrated in Fig. 1a that length 15 and height 14 are substantially equal", Wang shows a length of the stem defined between the lug and a bottom of the cup is "substantially equal" to a height of the cylindrical inner wall having the helical groove on the axis of the helical groove.

Regarding claim 15, the lug 12c includes a tab (formed between the slots 12e) that is flexible relative to the stem 12b, the tap is positioned in proximity to the free end of the stem 12b.

Regarding claim 20, the device includes a cap 11 capable of being retained on the base 15 (via member 14).

Regarding claim 24, the cup 12 is movable between a lowermost position and an uppermost position, and wherein the uppermost position engagement between the lug 12c and the means to limit travel prevents further upward movement of the cup, and wherein in the lowermost position the means to limit travel is sandwiched between a bottom of the cup 12a and a top of the base.

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Regarding claim 25, the stem 12b rotatably couples the sleeve 13 to the cup 12a.

10. Claims 26-36, 38, 39, 46-54, 56-58 are rejected under 35 U.S.C. 102(b) as being anticipated by Wang (5,813,421).

The Wang reference discloses a dispensing device (Figs. 3-4) including: a hollow base 26 having a helical groove 25d; a cup 22 containing the product; a sleeve 23 which is positioned at least partially above the base 26, wherein the sleeve 23 is rotatable relative to the base 26, the sleeve 23 including a portion 23c having a first cross-section (Fig. 4D); a stem 24 extending from the cup 22, the stem 24 having a first end coupled to the cup 22 and a second end, and wherein a lug 24e is disposed on the stem 24 proximate the second end; the stem 24 extends through the portion of the base 23 and the stem 24 is movable axially through the portion 23c, and further wherein the first cross-section is arranged with respect to a cross-section of the stem 24 at a location between the lug 24e and the first end of the stem 24 such that the portion 23c of the sleeve 23 is coupled to (members 24a and 24b of) the stem whereby upon rotation of the sleeve 23 the stem 24 rotates to thereby rotate the cup 22, and further wherein the lug 24e does not pass through the portion 23c of the sleeve 23 thereby limiting axial movement of the stem 24 and the cup 22; and wherein the lug 24e engages with the helical groove 25d such that as the sleeve 23 is rotated relative to the base 26, the lug 24e moves along the helical groove 25d to cause axial movement of the stem 24 and the cup 22 with respect to the sleeve 23.

Regarding claim 27, the stem 24 has a plurality of lugs 24e, 24f.

Regarding claim 28, the base 26 has a plurality of grooves 25d.

Regarding claims 29 and 33, the portion 23c of the sleeve 23 has a protrusion 23a.

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Regarding claim 30, the portion 23c defines non-circular aperture and the stem 24 has non-circular cross-section (Figs 4D and 4B).

Regarding claim 31, the protrusion 23a partially defines an aperture 23d delimiting the first cross-section, and the stem 24 extends through the aperture.

Regarding claim 32,35, the aperture defines at least a portion of a polygonal shape.

Regarding claim 36, the lug 24e includes a first tapered portion disposed between the lug and second end of the stem.

Regarding claim 38, the cup 22 is movable between a lowermost position and an uppermost position, in the lowermost position the portion 23C is sandwich between a bottom of the cup 22 and the top (of member 25) of the base.

Regarding claim 39, the portion 23c prevents the lug 24e from moving higher when the cup 22 is in the upper most position.

11. Claims 1, 2, 7, 11, 12, 13, 22, 23, 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Holloway (6,227,733).

The Holloway reference discloses a dispensing device comprising: a hollow base 70 having a cylindrical inner wall, a cup 52 which accommodates the product, a sleeve 30 which is positioned at least partially above the base 70, wherein the sleeve 30 is rotatable relative to the base 70, wherein the cup 52 moves axially inside the sleeve 30 in response to rotation of the sleeve 30 relative to the base 70, and further wherein the cup 52 is rotatably coupled to the sleeve 30, such that the cup 52 rotates when the sleeve 30 rotates, wherein the cup 52 is formed at the end of a stem 56, and wherein the stem 56 has at least one lug 66 in proximity to a free end of the stem 56, and wherein the lug 66 engages with a helical groove 74 in the cylindrical inner wall of the base 70, and further wherein the lug 66



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is resiliently supported by the stem 56 so as to be capable of disengaging from the groove 74 at least at one end of the groove 74, and wherein the sleeve 30 comprises means (inward flange on the top of sleeve 30 in Fig. 3) to limit the travel of the cup 52 .

Regarding claim 12, the sleeve 30 includes a flange 40 on an inner wall to engage with a groove 76 provided on an outer surface of the base 70 as shown in Fig. 13.

Regarding claim 13, the flange 40 has a semi-cylindrical cross-section.

***Claim Rejections - 35 USC § 103***

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wang (5,813,421) in view of Kim (6,224,281).

Although the Wang reference does not disclose that the base includes an open bottom end fitted with a bottom cap, attention is directed to the Kim reference which teaches another dispensing device comprising a base having an open end 107 covered by a bottom cap 119 as shown in Fig. 8.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ a base having an open end with a bottom cap on the Wang dispensing device in view of the teaching of the Kim reference as a color indication means for the cosmetic product inside of the device.

14. Claims 14,15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holloway (6,227,733) in view of Wang (5,813,421).

Although Hollow does not disclose a tab on which the lug is disposed is flexible relative to the stem, attention is directed to the Wang reference which teaches a stem 12b having two slots 12e (at end of the stem 12b) forming the flexible tabs on which the lugs are disposed for facilitating assembling the stem 12b into sleeve 13 from above.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide slots on the stem of the Holloway device in view of the teaching of Wang to form flexible tab so that the lugs can be deformed for facilitating assembling the stem into the sleeve.

15. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Holloway (6,227,733) in view of Wang (5,813,421).

Although the Holloway reference does not a cap, attention is directed the Wang reference which teaches a cap 11 (Fig. 1) for protecting the cosmetic stick when not in use.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a cap on the Holloway dispensing device in view of the teaching of Wang for protecting the cosmetic stick when not in use.

16. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Holloway (6,227,733) in view of Kim (6,224,281).

Although the Holloway reference does not disclose that the base includes an open bottom end fitted with a bottom cap, attention is directed to the Kim reference which teaches another dispensing device comprising a base having an open end 107 covered by a bottom cap 119 as shown in Fig. 8.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ a base having an open end with a bottom cap on the Holloway

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dispensing device in view of the teaching of the Kim reference as a color indication means for the cosmetic product inside of the device.

***Allowable Subject Matter***

17. Claims 16-19, 37, 40-45 and 55 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kasai et al teaches a dispensing device.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huyen Le whose telephone number is 571-272-4890. The examiner can normally be reached on Monday-Friday from 9:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Huyen Le  
Examiner  
Art Unit 3751

June 20, 2006